

Zoning Board of Appeals
Minutes
February 7, 2022

A meeting of the Zoning Board of Appeals (ZBA) was held via the Zoom Web Conferencing Service and in person on February 7, 2022 at 7:00 pm.

Present: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore

Associate Members: Leonard Golder, Michael Naill and Andy Crosby

Absent: Associate Member Ruth Sudduth

The Meeting was called to order at 7:00 pm

Mark Jones announced that Andrew DeMore was recently appointed and sworn in as a Voting Member and Andy Crosby was appointed and sworn in as an Associate Member.

Minutes

December 16, 2021

Ernest Dodd moved to approve minutes of the December 16, 2021 meeting as amended. The motion was seconded by Andrew DeMore and carried by a roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Leonard Golder questioned why he cannot take part in the vote to approve minutes, particularly when they are minutes that he was present at. Karen Kelleher noted, because the ZBA is a 5-member board the vote should not exceed 5. Associate Members are limited to voting on public hearings, if appointed by the chair in the absence or inability to act on the part of a voting member.

January 3, 2022

Ernest Dodd moved to approve minutes of the January 3, 2022 meeting as amended. The motion was seconded by Andrew DeMore and carried by a roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Public Hearing – 92-102 Great Road (Volume III Page 855)

At 7:30 pm, Mark Jones called the Public Hearing to order to consider a Special Permit Application filed by Richard Presti to allow a car port at 92-102 Great Road.

Ernest Dodd moved to waive the reading of the Notice of Public Hearing. The motion was seconded by David Hartnagel and carried by a roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Mark Jones noted that the Applicant, Richard Presti, is out of the country this evening and therefore, requested that the Public Hearing be continued without testimony to March 7, 2022.

Ernest Dodd moved to continue the Public Hearing without testimony to March 7, 2022 at 7:30 pm. The motion was seconded by Andrew DeMore and carried by a roll call vote in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Green Advisory Committee

Arnie Epstein, Chair of the Green Advisory Committee, met with the Board to give an overview of their efforts. He noted the Green Advisory Committee is a 9-member committee appointed by the Select Board.

The Committee's charge is to assist town government, businesses and residents on ways to improve energy efficiency, mitigate impacts of climate change, reduce greenhouse gas emissions, oversee the development of the Town's Climate Action Plan and align Stow with the state's greenhouse gas reduction legislation. There is an aggressive target for emission reductions by 2030 for buildings and transportation.

The State's emission reduction legislation is slated for March. In 2017, Stow did a greenhouse gas inventory. If Stow adopts those goals the targets will have an impact on Town buildings and transportation. The major sector the State is looking to is buildings with the goal of cutting emissions in half.

Essentially emissions are pretty well equally divided between buildings and transportation. Residential buildings make up two thirds of the building inventory with 90% of emissions from heating and hot water. One focus they are looking at is buildings which represent half of the greenhouse emissions.

One activity the committee has planned is outreach and support for new and existing homes.

Stow is well positioned to make progress in building sector with Hudson Light and Power electric rates being one of the lowest in state. A strategy is to do a fuel switch from oil/natural gas to electric. Using heat pumps is significantly lower cost than natural gas and very much lower than fuel oil.

The Committee will be asking select board to adopt a resolution prohibiting use of fossil fuels in any new municipal buildings. They are working with Hudson Light and Power in hopes they will offer an incentive for all electric new homes.

The Committee is also talking to developers of Stow Acres and Athens Lane to encourage all electric homes. They have gotten favorable responses but nothing definite at this point. There is no regulatory authority to mandate all electric, but they are trying to incentivize builders.

To help toward this effort, some towns are using certain types of incentives, performance requirements, design review, special permitting and special overlay districts. Arnie Epstein will provide a link to the zoning approaches that towns in the MetroWest area have taken.

Mark Jones asked if the schools are included in the inventory of municipal buildings. Arnie Epstein said because Stow is part of a regional district, the energy reduction plan does not include those buildings.

Mark Jones asked what happens to Hudson Light and Power's rates when Seabrook goes offline. Arnie Epstein said Seabrook has been extended to the year 2050. Hudson Light and Power does not have specifics on how to replace the Seabrook. There is an expectation that clean and renewable energy will provide for affordable rates.

Karen Kelleher asked if the zoning initiatives mentioned have been adopted and approved by the Attorney General. Arnie Epstein said the major one that was not adopted was Brookline where they

attempted to prohibit new construction from using gas or fuel oil. A number of other towns have home rule petitions before the legislature. Some are looking at other approaches to encourage clean energy.

Karen Kelleher asked if the Building Code has changed to incentivize green energy. Arnie Epstein said the Town adopted the stretch code. He noted that state is holding a webinar on this subject tomorrow morning. There is a proposal for an “opt in” code.

Len Golder said it seems to a good to convert to electricity and questioned what kind of energy source the electric companies will use to create electricity. Arnie Epstein said each municipal light plant has their own source. Hudson Light and Power is Seabrook which is a form of greenhouse gas emission. When Stow and Hudson residents switch to electricity they will save money and reduce emissions. For the state the percent of clean electricity is not as high. He said it is a good point as to what the source of energy the electric companies use. He believes homeowners won’t switch out until the end of life of their system. If the Electric Companies source is not as clean as they would like, it would be recommended that they do the switch and assume the provider will catch up.

Mark Forgues asked if there is any legislation to help with the cost of the heat pumps. He said it is expensive to convert, even for contractors. Arnie Epstein said that although Hudson Light and Power has low rates, they don’t offer the incentives. MassSave just adopted a new 30-year plan with a very generous incentive which includes a \$10,000.00 rebate. Hudson Light and Power does not offer that type of incentive.

Public Hearing Continuance – 122 South Acton Road Special Permit (Volume III, Page 854)

Members participating in this hearing: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Andrew DeMore

Chairman Mark Jones called the Public Hearing Continuance to consider an Application for Special Permit for an above ground pool and deck at 122 South Acton Road.

Mark Jones stated that Board Members visited the site. He asked Board Members to report on their observations.

Leonard Golder said he made the site visit and got a tour of the whole area. He didn’t see any issues of problems of runoff where the pool is proposed.

Andrew DeMore agreed with Leonard Golder. He noted that the proposed pool is a temporary installation and could be removed. He noted there is a berm between the pool and the abutting property that would deflect water flow away from the abutting property in the case of a leak.

William Byron said, although unlikely, there is no guarantee where the water would go. He asked who would be responsible if there was a problem. David Hartnagel said in the unlikely event there was a problem, it would be the pool owner’s responsibility.

Ernest Dodd said he visited the site independently. He noted the berm and that most of the water would go down the driveway. The location meets all the required setbacks. If there was a dispute over the property lines, it would be up to the homeowners to resolve.

Mark Jones asked if the Applicant has a sense of the number of gallons of water in the pool and if the water will remain in the pool year-round. Nicholas Hatch said he does not know the number of gallons but noted that the pool will be approximately 24 feet round and 4 feet tall. The plan is to keep the water in the pool year-round, which is common for that type of pool. The pool will be filled by a tanker truck.

Members noted the berm is by the neighbor's house, which is uphill. If there was major leak the runoff would go mainly where the rupture occurs and then will spread out. The neighbor might see some runoff.

Leonard Golder asked if a pool rupture would be more than a major rainstorm.

William Byron said he doesn't recall any other above ground pool applications. Ernest Dodd said above ground pool are popular.

Ernest Dodd stated most of the Runoff would go down the driveway and the berm would help deflect the water away from the abutter.

David Hartnagel said he understands the concern about a leak. It is a level of risk that falls on the homeowner.

Mark Forgues suggested that pool filter for the backwash not be installed on the neighbor's side of the pool.

Nicholas Hatch said their plan is to locate the filter on the farther side of the pool from the neighbors.

Mark Jones asked the Applicant if he has concern about impact to his own house. Nicholas Hatch said the area was already leveled for the play structure is. He is not concerned about a catastrophic event.

Ernest Dodd moved to close the public hearing. The motion was seconded by Andrew DeMore and carried by a roll call vote of five in favor (Mark Jones, William Byron, Ernest Dodd and Andrew DeMore)

Deliberations, 122 South Acton Road Special Permit

Members reviewed the draft Decision and agreed to add the following findings:

- The Board Finds that, based on topography of the lot, drainage in the area flows primarily toward the Applicant's driveway and South Acton Road. Although the abutters property at 128 South Acton Road is protected by a short berm, there is small area between the abutter's house and the berm.
- The Board finds adequate protection is provided for the abutting property at 128 South Acton Road.
- Property line setback requirements will be confirmed with a formal plan with an application for building permit. Existing wells will not be impacted as the pool will be filled by a tanker truck. As water will be maintained in the pool year-round there should be no cause for runoff from the pool being drained.
- In the event of a major leak the water would likely go from the location of where the rupture occurs and then will spread out.

The Board agreed to add the following condition:

- The pool filter shall be located on the opposite side of the pool from the property at 128 South Acton Road.

Ernest Dodd moved to approve a Special Permit for 122 South Acton Road to allow construction of an above ground pool and deck and to approve the draft decision as amended. The motion carried by a roll call vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore.

51 Hale Road Public Hearing continuance (Volume III, Page 846 and 847)

The Public Hearing continuance from September 20, 2021, October 4, 2021 and November 1, 2021 and January 3, 2021 to order to consider applications for Special Permit and Variance to allow construction of a garage at 51 Hale Road was called

Chris Schuch stated that when he was last before the Board he was asked to come up with alternative plans. He is seeking more direction as he is not sure what the objections are of the original plan.

Ernest Dodd said the original design required a variance. He doesn't think the plan meets the qualifications for a variance as there is plenty of room on the lot to place a garage without the need for a variance.

Mark Jones explained the standards for granting a variance. The Board must find:

- The lot is strangely shaped which would hinder placement of a building
- There is odd geology on the lot, such as a giant boulder or ledge
- Topography is strange, such as there is a steep cliff or if there is odd geology on the lot like a giant boulder or ledge.

Mark Jones said he agrees with Ernie Dodd that those standards cannot be met as the lot is relatively flat and not strangely shaped.

Ernest Dodd said the proposed garage must be placed so as to meet the 25-foot setback requirement.

Mark Jones asked if Chris Schuch wishes to continue the hearing to allow time to adjust the plan.

William Byron asked how long the existing pad is. Chris Schuch said it is 15 feet by 30 feet. the end of the pad is within the 25-foot setback requirement. William Byron said based on his own observation, if the garage length is limited to meet the setback, that would be something he would think about approving. William Byron also suggested the Applicant could think about orienting the garage from front to back. Chris Schuch said he could not place the garage kitty corner to the house because of the telephone pole. Moving the pole would raise the cost by 30%.

Mark Jones said he wonders if the pole could be moved and installed by another entity. Chris Schuch said the pole is owned by Verizon and they want \$5,000.00 up front and then another \$5,000.00 to move it. If the lines were put under ground, they would still need a pole to make the connection.

William Byron suggested reorienting the garage front to back, not necessarily on the existing pad. Chris Schuch said he would lose 9 feet.

Ernest Dodd said the Board cannot design it for him. He needs to meet the setbacks.

Karen Kelleher read an email from Eric Kerble, 41 Hale Road into the record: "I've attended two prior meetings for the 51 Hale Road special permit, but I cannot attend this evening. I would like to reiterate my objection to the structure. I am concerned about the expansion of a commercial business in a residential setting and, in particular, a business which will have adverse environmental derivatives such as oil, transmission fluid, gas, etc. potentially leaking into the soil and into Lake Boon."

William Byron said he understands the use is not a commercial operation. He has private vehicles that he uses to plow during the winter. Ernest Dodd said if he is snowplowing for money, it is a business. Chris Schuch said he is not conducting business there. Leonard Golder said he would not be doing auto repair there. He would bring them to others. Andrew Crosby, said in that sense it would be better to have a garage.

Fred Dusseault, abutter, questioned what is considered a commercial enterprise and is not sure how to separate the commercial use from the residential use. He said it is a commercial business if he uses the vehicles to do a commercial job. If the commercial use extends to some other aspect, such as maintaining vehicles, that is not a residential use.

Leonard Golder said if the garage is big enough it should be able to accommodate the vehicles, but he is not sure if there is room for other materials that are currently stored outside.

Andrew DeMore said maintenance would also require clean up.

William Byron asked if the Board has concern about the business. Chris Schuch said he has been plowing since 1991. Ernie Dodd said he has no basic problem, but the place needs to be cleaned up.

Members discussed continuance of the public hearing to allow the applicant to refine the plan. Karen Kelleher noted that the March meeting agenda is already pretty full. Chris Schuch said he could be ready for the April meeting. Mark Jones suggest that the hearing be continued to March 7th for a 10-minute update. The Applicant Agreed.

Ernest Dodd moved to continue the Public Hearing to March 7, 2022 at 8:20 pm for 10-minute review of the plan. The motion was seconded by Andrew DeMore and carried by a roll call vote of five members in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Annual Report

Members reviewed a draft Annual Report. Andrew DeMore moved to accept the Draft Annual Report as amended. The motion was seconded by David Hartnagel and carried by a roll call vote of five members in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

March 7, 2022 Public Hearings

Mark Forgues noted that the Public Hearing for his application appealing the Building Commissioners Decision is scheduled on March 7, 2022. He is concerned about the 20-minute time limit and wants to make sure there is adequate time to present his appeal. Chairman Mark Jones said he will make sure that adequate time is provided.

Adjournment

At 9:01 pm, Andrew DeMore moved to adjourn the meeting. The motion was seconded by Ernest Dodd and carried by a roll call vote of five members in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Respectfully submitted,

Karen Kelleher
Administrative Assistant